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ELOHIM EPF USA, INC.

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 ELOHIM EPF USA, INC., a
California Corporation,

14 Plaintiff,

15 vs.

16 BEVERLY BISTRO, INC., a
17 California Corporation d/b/a
EXPRESS NIGHT CLUB; JIMMY
18 LEE, an individual; UNI DELIPIA,
INC., a California Corporation d/b/a
19 MUZEN KARAOKE; IL CHAN KIM,
an individual; BEE FREE, INC., a
20 California Corporation d/b/a
VOLCANO; SUNNY YUN, an
21 individual; YOUNG CHUL YI, an
individual d/b/a CLUB
22 RENDEVOUS; CHARLES
HYUNGSUP LEE, an individual
23 d/b/a GRAND CAFE; HYE MIN
CHOI, an individual d/b/a CHORUS
24 MUSIC STUDIO; and DOES 1
through 20, inclusive

25 Defendants.
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27
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Case No.:

COMPLAINT FOR

1. **DIRECT COPYRIGHT INFRINGEMENT;**
2. **CONTRIBUTORY COPYRIGHT INFRINGEMENT;**
3. **VICARIOUS COPYRIGHT INFRINGEMENT;**
4. **INDUCING COPYRIGHT INFRINGEMENT**

JURY DEMAND

1 Plaintiff Elohim EPF, USA, Inc. alleges as follows:

2
3 **I**

4 **JURISDICTION**

5 1. This court has subject matter jurisdiction over this action because it
6 arises under the laws of the United States, 28 U.S.C. § 1331, more particularly,
7 because it arises under an Act of Congress relating to copyrights, 28 U.S.C. § 1338,
8 namely, the Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*

9
10 **II**

11 **VENUE**

12 2. Venue is proper in this district pursuant to 28 U.S.C. § 1400(a), in that
13 all of the defendants, or their agents, reside or may be found in the district.

14 3. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b) in
15 that either: (1) one or more defendants reside in this district, and all defendants
16 reside in this state; (2) a substantial part of the events or omissions giving rise to the
17 claim occurred in this district; or (3) at least one defendant resides in this district,
18 if there is no district in which the action may otherwise be brought.

19
20 **III**

21 **PARTIES**

22 4. Plaintiff ELOHIM EPF USA, INC. (“Elohim”) is a corporation duly
23 organized and existing under the laws of the State of California, with its principal
24 place of business in Diamond Bar, California. Elohim is the United States sub-
25 publisher for a substantial number of music publishers in the Republic of Korea
26 (“Korea”) and, as such, controls the right to license compositions for those
27 publishers in the United States.

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1 5. Defendant BEVERLY BISTRO, INC. ("BEVERLY BISTRO") is a
2 corporation duly licensed and existing under the laws of the State of California, with
3 its principal place of business in Stanton, California. BEVERLY BISTRO operates,
4 maintains and controls an establishment known as EXPRESS NIGHT CLUB
5 ("EXPRESS") located at 4289 Beverly Boulevard, Los Angeles, California 90004,
6 in this district. EXPRESS contains and operates karaoke machine(s) on its premises.
7 BEVERLY BISTRO has a direct financial interest in EXPRESS.

8 6. Defendant JIMMY LEE is, upon information and belief, a resident of
9 Los Angeles County, and the Chief Executive Officer of BEVERLY BISTRO.
10 Upon information and belief, JIMMY LEE directs, controls and ratifies the
11 operation and management of BEVERLY BISTRO d/b/a EXPRESS, and has a
12 direct financial interest in BEVERLY BISTRO d/b/a EXPRESS. JIMMY LEE is
13 the moving force behind the infringing activity alleged herein and is personally
14 liable for such infringement.

15 7. Defendant UNI DELIPIA, INC. ("UNI DELIPIA") is a corporation
16 duly licensed and existing under the laws of the State of California, with its
17 principal place of business in San Diego, California. UNI DELIPIA operates,
18 maintains and controls an establishment known as MUZEN KARAOKE
19 ("MUZEN") located at 7770 Vickers Street, #100, San Diego, California 92111.
20 MUZEN contains and operates karaoke machine(s) on its premises. UNI DELIPIA
21 has a direct financial interest in MUZEN.

22 8. Defendant IL CHAN KIM is, upon information and belief, a resident
23 of San Diego County, and an officer of UNI DELIPIA. Upon information and
24 belief, IL CHAN KIM directs, controls and ratifies the operation and management
25 of UNI DELIPIA, INC. d/b/a MUZEN KARAOKE, and has a direct financial
26 interest in UNI DELIPIA, INC. d/b/a MUZEN KARAOKE. IL CHAN KIM is the
27 moving force behind the infringing activity alleged herein and is personally liable
28 for such infringement.

1 9. Defendant BEE FREE, INC. ("BEE FREE") is a corporation duly
2 licensed and existing under the laws of the State of California, with its principal
3 place of business in Los Angeles, California. BEE FREE operates, maintains and
4 controls an establishment known as VOLCANO ("VOLCANO") located at 531
5 South Alvarado Street, Los Angeles, California 90057, in this district. VOLCANO
6 contains and operates karaoke machine(s) on its premises. BEE FREE has a direct
7 financial interest in VOLCANO.

8 10. Defendant SUNNY YUN is, upon information and belief, a resident of
9 Orange County, and the Chief Executive Officer of BEE FREE. Upon information
10 and belief, SUNNY YUN directs, controls and ratifies the operation and
11 management of BEE FREE d/b/a VOLCANO, and has a direct financial interest in
12 BEE FREE d/b/a VOLCANO. SUNNY YUN is the moving force behind the
13 infringing activity alleged herein and is personally liable for such infringement.

14 11. Defendant YOUNG CHUL YI, is, upon information and belief, a
15 resident of Orange County, and operates, maintains and controls an establishment
16 known as CLUB RENDEVOUS ("RENDEVOUS") located at 8610 West Garden
17 Grove Boulevard, Garden Grove, California 92844. RENDEVOUS contains and
18 operates karaoke machine(s) on its premises.

19 12. Upon information and belief, YOUNG CHUL YI directs, controls and
20 ratifies the operation and management of RENDEVOUS, and has a direct financial
21 interest in RENDEVOUS. YOUNG CHUL YI is the moving force behind the
22 infringing activity alleged herein and is personally liable for such infringement.

23 13. Defendant CHARLES HYUNGSUP LEE, is, upon information and
24 belief, a resident of Los Angeles County, and operates, maintains and controls an
25 establishment known as GRAND CAFÉ ("GRAND CAFE") located at 3160 West
26 8th Street, Los Angeles, California 90005. GRAND CAFE contains and operates
27 karaoke machine(s) on its premises.

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1 14. Upon information and belief, CHARLES HYUNGSUP LEE directs,
2 controls and ratifies the operation and management of GRAND CAFE, and has a
3 direct financial interest in GRAND CAFE. CHARLES HYUNGSUP LEE is the
4 moving force behind the infringing activity alleged herein and is personally liable
5 for such infringement.

6 15. Defendant HYE MIN CHOI, is, upon information and belief, a resident
7 of Los Angeles County, and operates, maintains and controls an establishment
8 known as CHORUS MUSIC STUDIO ("CHORUS") located at 326 West Western
9 Avenue, Los Angeles, California 90020. CHORUS contains and operates karaoke
10 machine(s) on its premises.

11 16. Upon information and belief, HYE MIN CHOI directs, controls and
12 ratifies the operation and management of CHORUS, and has a direct financial
13 interest in CHORUS. HYE MIN CHOI is the moving force behind the infringing
14 activity alleged herein and is personally liable for such infringement.

15 17. All of the aforementioned Defendants, and Doe defendants, when
16 referred to collectively herein, shall be referred to as "Defendants." The
17 establishments that contain and operate karaoke machine(s) on their premises, when
18 referred to collectively herein, shall be referred to as "Karaoke Establishments."

19 18. All Defendants are joined pursuant to Fed. R. Civ. P. 20(a)(2).

20 19. Each of the Defendants publicly performs musical compositions and/or
21 causes musical compositions to be publicly performed in connection with the
22 operation of the Karaoke Establishments.

23 20. Plaintiff is ignorant of the true names and capacities of the Defendants
24 sued herein as Does 1-20, inclusive, and therefore sues these Defendants by such
25 fictitious names. Plaintiff will amend this Complaint to allege the true names and
26 capacities when ascertained. Plaintiff is informed and believes, and on that basis
27 alleges, that each of the fictitiously-named Defendants is responsible in some

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1 manner or capacity for the wrongful conduct alleged herein, and that Plaintiff's loss
2 as alleged herein was proximately and/or directly caused by such Defendants' acts.

3 21. All of the claims for copyright infringement joined in this Complaint
4 are governed and arise from or relate to the same transaction or occurrence, or series
5 of transactions or occurrences, and one or more questions(s) of law or fact are
6 common to all the parties. In particular, Plaintiff alleges that Defendants have
7 infringed Plaintiff's copyrights by performing or causing the performance of
8 Plaintiff's musical compositions without authorization. Thus, joinder of these
9 claims will promote the convenient administration of justice and will avoid a
10 multiplicity of separate, similar actions against Defendants.

11 IV

12 FACTS COMMON TO ALL CLAIMS

13 Elohim EPF, USA, Inc.

14 22. Commencing on or about July 1, 2013 and continuing through the
15 present, Elohim has been and continues to be the exclusive "Subpublisher" in the
16 United States and Canada of thousands of well-known and popular Korean music
17 compositions (for a small number of these songs, Elohim acts as the publisher).
18 These thousands of songs are referred to collectively herein as the "Compositions."

19 23. A "Subpublisher" is a term of art in the music publishing industry,
20 which means a person or entity that has received from the copyright owner(s) or
21 various musical compositions a grant of the exclusive right in one (1) or more
22 countries of the world to "Administer" such musical compositions. In the music
23 publishing industry, a "publisher" differs from a "Subpublisher" in that the
24 copyright owner usually grants the "publisher" the exclusive right to Administer
25 musical compositions throughout the world, whereas a copyright owner usually
26 grants one (1) or more "Subpublishers" the exclusive right to Administer musical
27 compositions for a territory less than the entire world.
28

24. “Administer” is a term of art in the music publishing industry which means the right to license and grant all rights in the applicable musical compositions (and their copyrights), and to collect all monies earned in connection with such musical compositions.

25. Accordingly, pursuant to the terms of the Subpublishing agreements (or in certain specified instances, the publishing agreements) between Elohim and the copyright holders of the Compositions, Elohim registered certain Compositions with the U.S. Copyright Office (hereinafter collectively the “Registered Compositions”). Although Plaintiff contends that Defendants have infringed Plaintiff’s rights in all of the Compositions, this lawsuit concerns only the following Registered Compositions:

1. Hwa (Case No. 1-3910651651)¹;
2. Ba Daeui Yeo-in (Case No. 1-3910651651);
3. Yeht Sarang (Case No. 1-3910651651);
4. Sarang Eui Euiji (Case No. 1-3910651651);
5. Yoksim Upneun Maeum (Case No. 1-3910651651);
6. Haeng Jin (Case No. 1-1025712461);
7. Michigetseo (Case No. 1-1025150817);
8. Jangnan Anya (Case No. 1-1025150817)
9. Bad Boy (Case No. 1-3396749316)
10. NumMuri Jururuk (Case No. 1-1025150817)
11. Bam Ha Neul E (Case No. 1-1025150817)
12. Jeong Sin I Na Gat Eot Na Bwa (Case No. PA 1-904-034)
13. Hot Boy (Case No. 1-3374196266)
14. Il Gi Jang (Case No. 1-3397260545)
15. To Yo Il Bam E (Case No. 1-3396749291)
16. Dolgo Dolgo Dolgo (Case No. 1-1025712461)

¹/ Songs one through five were registered pursuant to publishing agreements.

- 1 17. Bunmyung Ha Ge (Case No. 1-1025712461)
- 2 18. Geok Jeong Mara (Case No. 1-1025712461)
- 3 19. Narang Sagwilrae (Case No. 1-1025150817)
- 4 20. Seul Peun Uem Ak (Case No. SR000073592)
- 5 21. Diva (Case No. 1-3373820967)
- 6 22. Neo Ttae Mun E (Case No. 1-3373820967)
- 7 23. Bingeul Bingeul (Case No. 1-3916873398)
- 8 24. Tteol Eo Jin Da Nun Mool (Case No. 1-337396867)
- 9 25. Superman (Case No. 1-3336625682)
- 10 26. A Ro Ha (Case No. 1-3916873477)
- 11 27. Yak Sok (Case No. 1-3916873566)
- 12 28. Love Again (Case No. 1-3916873615)
- 13 29. For U (Case No. 1-3916873664)
- 14 30. Eol Ssu (Case No. 1-3364876763)
- 15 31. Himeul Naepsi Da (Case No. 1-3916873733)
- 16 32. Ga Ye Wo (Case No. 1-3373968648)
- 17 33. Go Hae (Case No. SR0000740303)
- 18 34. Gin Sang Meo Ri Geu Nyeo (Case No. SR0000733789)
- 19 35. Ma Boy (Case No. SR0000735001)
- 20 36. So Cool (Case No. SR0000735000)
- 21 37. Push Push (Case No. SR0000735000)
- 22 38. Gu Dae Wa Ham Ke (Case No. SR0000734414)
- 23 39. Neo Man Ul Nu Ki Myeo (Case No. SR0000734414)
- 24 26. Elohim is the exclusive owner of the United States copyright in and to
- 25 the Registered Compositions.
- 26 27. During all periods relevant to this action, Elohim has had and continues
- 27 to have the exclusive rights in the copyright under the Copyright Act to the
- 28 Registered Compositions, including a) the exclusive right to reproduce the

1 Registered Compositions in copies or phonorecords (17 U.S.C. § 106(1)); b) the
 2 exclusive right to prepare derivative works based on the Registered Compositions
 3 (17 U.S.C. § 106(2)); c) the exclusive right to distribute copies or phonorecords of
 4 the Registered Compositions in the public by sale, rental, lease or lending (17
 5 U.S.C. § 106(3)); d) the exclusive right to perform the Registered Compositions
 6 publicly (17 U.S.C. § 106(4)); and e) the exclusive right to *display* the Registered
 7 Compositions publicly (17 U.S.C. § 106(5)).

8 28. Within the past three years Defendants have, in the Karaoke
 9 Establishments, publicly performed and displayed and/or caused the public
 10 performance and display of, the Registered Compositions by means of karaoke
 11 machines, video monitors and sound systems.

12 **Defendants**

13 29. Karaoke, which means “empty orchestra” in Japanese, is a multi-million
 14 dollar business. Karaoke recordings are re-recordings of hit songs with the lead
 15 vocal tracks either omitted (instrumental) or sung by sound-alike artists (learning
 16 track). Lyrics are usually displayed on a video screen, along with a moving symbol,
 17 changing color, or music video image as a “prompt” to guide the singer in singing-
 18 along with the track.

19 30. According to public records, since on or about April 2017, Defendants
 20 have, and continue to, own and operate various so-called “karaoke bars” in the cities
 21 of Los Angeles, Stanton, Fullerton, La Habra and San Diego. Defendants charge
 22 customers money for access to the many karaoke machines that Defendants have
 23 placed in the Karaoke Establishments described herein. The karaoke machines, and
 24 the interaction of the customers with those machines, are the primary features of the
 25 experience for which customers pay Defendants. Without karaoke music,
 26 Defendants would not be able to operate their businesses *at all*, and would earn no
 27 revenue; karaoke music is Defendants’ stock-in-trade.

28 ///

1 31. Upon entering a Karaoke Establishment, one of Defendants' employees
2 will assign patrons to one of the multiple individual karaoke rooms located therein.
3 In these individual karaoke rooms, Defendants have set up a karaoke machine, video
4 monitor, and sound system (e.g., speakers, amplifier and microphone) such that
5 patrons can access and perform the musical compositions pre-recorded onto the
6 karaoke machines, which compositions include the Registered Compositions.
7 Within each room there is also a binder that lists all of the karaoke musical
8 compositions (i.e., songs) by name and number, for selection by customers, and
9 which include the Registered Compositions. After a patron selects a certain musical
10 composition, the instrumental music for the composition is played over the sound
11 system, while concurrently a video monitor displays the lyrics for the musical
12 composition so that the patron can sing along.

13 32. A fundamental legal requirement for publicly performing copyrighted
14 musical compositions embodied in karaoke recordings is a license granting the right
15 of public performance, which must be obtained from the owner and/or administrator
16 of the copyright of the musical compositions to be performed. In addition, the
17 public visual display of song lyrics on the video monitors of the karaoke machines
18 enjoys independent copyright protection, and thereby requires a separate license
19 granting the right of display, which must also be obtained from the owner and/or
20 administrator of the musical compositions.

21 33. Here, Plaintiff has not granted Defendants the right to publicly perform
22 or publicly display any of the Compositions. Moreover, Defendants have known
23 that their continued public performance and public display of each of the
24 Compositions constituted copyright infringement prior to the initiation of this action
25 because Plaintiff sent cease and desist letters to Defendants. In addition, Plaintiff has
26 made public announcements regarding such infringing conduct by Karaoke
27 Establishments in order to educate them about such infringement, and urge them to
28 stop, or acquire appropriate licenses. Thus, despite Defendants' knowledge that they

1 lacked authorization to publicly perform or publicly display the Compositions,
2 Defendants knowingly, willfully and intentionally continued their extensive use of
3 each of the Compositions in their respective Karaoke Establishments and failed to
4 pay Elohim for the right to publicly perform and publicly display each of the
5 Compositions as required by 17 U.S.C. §§ 106(4) and (5).

6
7 **FIRST CLAIM FOR RELIEF FOR**
8 **COPYRIGHT INFRINGEMENT**
9 **(Against All Defendants)**

10 34. Plaintiff realleges and incorporates herein by reference each and every
11 allegation set forth in Paragraphs 1 through 33, hereinabove, inclusive, as though
12 set forth at length herein.

13 35. As set forth in detail above, Elohim is the copyright owner of the
14 Registered Compositions and has the exclusive right to grant licenses for the public
15 performance and public display of the Registered Compositions in the territory of
16 the United States.

17 36. Since the inception of the Karaoke Establishments, Defendants have
18 publicly performed and publicly displayed, and/or caused or authorized the public
19 performance and public display, of each of the Registered Compositions by means
20 of one or more karaoke machines and through elaborate and expensive sound
21 systems and video monitors. Each of the public performances and public displays
22 of the Compositions has been conducted without a license or authorization from
23 Plaintiff.

24 37. Thus, Defendants have knowingly and intentionally authorized, caused,
25 and engaged in the unlicensed public performance and public display of each of the
26 Registered Compositions in violation of Plaintiff's exclusive rights under the
27 Copyright Act, 17 U.S.C. §§ 106(4) and (5).

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1 38. On information and belief, Defendants' unlawful conduct has continued
2 since the inception of the Karaoke Establishments on a nightly basis and on such
3 numerous occasions that recounting each specific instance of infringement is
4 impossible.

5 39. Each unauthorized public performance of each of the Registered
6 Compositions constitutes a separate and distinct act of direct copyright
7 infringement.

8 40. Each unauthorized public display of each of the Registered
9 Compositions constitutes a separate and distinct act of direct copyright
10 infringement.

11 41. The specific acts of copyright infringement alleged in this Complaint,
12 as well as Defendants' entire course of conduct, have caused and are causing
13 Plaintiff significant damage. By continuing to provide unauthorized public
14 performances and public displays of each of the Registered Compositions at their
15 Karaoke Establishments, Defendants threaten to continue committing copyright
16 infringement on essentially a daily basis. Unless this Court restrains Defendants
17 from committing further acts of copyright infringement, Plaintiff will suffer
18 irreparable injury for which it has no adequate remedy at law.

19 42. Plaintiff also seeks an order under 17 U.S.C. § 503, directing the
20 impoundment, destruction or other reasonable disposition of all infringing karaoke
21 machines.

22 43. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of
23 Defendants' direct infringement of Plaintiff's copyrights, Plaintiff is entitled to
24 recover up to \$150,000 in statutory damages for each of the Registered
25 Compositions infringed. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C.
26 § 504(b), Plaintiff is entitled to its damages, including Defendants' profits from
27 infringement, in connection with the Registered Compositions as will be proven at
28 trial.

1 44. Plaintiff is also entitled to recover attorney's fees and costs pursuant
2 to 17 U.S.C. § 505 and prejudgment interest according to law.

3
4 **SECOND CLAIM FOR RELIEF FOR**
5 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**
6 **(Against All Defendants)**

7 45. Plaintiff realleges and incorporates herein by reference each and every
8 allegation set forth in Paragraphs 1 through 44, hereinabove, inclusive, as though
9 set forth at length herein.

10 46. As set forth in detail above, Elohim is the copyright owner of the
11 Registered Compositions and has the exclusive right to grant licenses for the public
12 performance and public display of the Registered Compositions in the territory of
13 the United States.

14 47. Defendants charge patrons money to access the karaoke machines that
15 Defendants have placed in the Karaoke Establishments. Patrons pay Defendants an
16 hourly rate for access to one of Defendants' rooms, wherein patrons are provided the
17 opportunity and ability to cause the public performance and public display of each
18 of the Registered Compositions without a license. The sole purpose of the
19 individual rooms is to provide patrons with a space to publicly perform and publicly
20 display musical compositions (including the Registered Compositions) in the
21 karaoke machines, and to charge patrons for such use.

22 48. By providing patrons the space and ability (i.e., by furnishing the
23 individual rooms with a karaoke machine, video monitor and sound system to play
24 recordings of the musical compositions and display their lyrics) to publicly perform
25 and to publicly display each of the Registered Compositions, Defendants have
26 knowingly and systematically induced, caused, materially contributed to and
27 participated in the infringing activity.

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1 49. Furthermore, as sophisticated business owners, Defendants know that
2 they must have a license for the public performance and public display of the
3 musical compositions in the karaoke machines that Defendants have on their
4 premises. Prior to this litigation, Defendants were in receipt of, and/or were aware
5 of, cease and desist letter(s) and/or public announcements/press releases warning
6 Karaoke Establishments to secure the proper licensing for the karaoke machines and
7 musical compositions thereon, particularly a license for the Compositions (which
8 include the Registered Compositions).

9 50. By knowingly providing patrons unfettered access to publicly perform
10 and publicly display each of the unlicensed Registered Compositions, Defendants
11 have engaged in contributory copyright infringement. Despite Defendants'
12 knowledge that they lacked authorization to publicly perform and to publicly display
13 each of the Compositions, Defendants knowingly, willfully and intentionally
14 continued to induce, cause or materially contribute to the infringement of Plaintiff's
15 rights by holding themselves out as a "karaoke-bar" and providing patrons of the
16 Karaoke Establishments with individual rooms equipped to publicly perform and
17 display each of the Registered Compositions in violation of Plaintiff's rights under
18 Sections 105(4) and 106(5) of the Copyright Act.

19 51. On information and belief, Defendants' contributory unlawful conduct
20 has continued since the inception of the Karaoke Establishments on a nightly basis
21 and on such numerous occasions that recounting every instance of infringement is
22 impossible.

23 52. Each unauthorized public performance of each of the Registered
24 Compositions constitutes a separate and distinct act of contributory copyright
25 infringement.

26 53. Each unauthorized public display of each of the Registered
27 Compositions constitutes a separate and distinct act of contributory copyright
28 infringement.

1 54. Defendants' conduct has been and continues to be intentional, willful,
2 and with full knowledge of Plaintiffs' rights in each of the Registered Compositions,
3 and the contributory infringement thereof.

4 55. The specific acts of contributory copyright infringement alleged in this
5 Complaint, as well as Defendants' entire course of conduct, have caused and are
6 causing Plaintiff significant damage. By continuing to provide unauthorized public
7 performances and public displays of each of the Registered Compositions at their
8 Karaoke Establishments, Defendants threaten to continue committing copyright
9 infringement on essentially a daily basis. Unless this Court restrains Defendants
10 from committing further acts of copyright infringement, Plaintiff will suffer
11 irreparable injury for which it has no adequate remedy at law.

12 56. Plaintiff also seeks an order under 17 U.S.C. § 503, directing the
13 impoundment, destruction or other reasonable disposition of all infringing karaoke
14 machines.

15 57. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of
16 Defendants' contributory infringement of Plaintiff's copyrights, Plaintiff is entitled
17 to recover up to \$150,000 in statutory damages for each of the Registered
18 Compositions. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b),
19 Plaintiff is entitled to its damages, including Defendants' profits from infringement,
20 in connection with the Registered Compositions as will be proven at trial.

21 58. Plaintiff is also entitled to recovery attorney's fees and costs pursuant
22 to 17 U.S.C. § 505 and prejudgment interest according to law.

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**THIRD CLAIM FOR RELIEF FOR
VICARIOUS COPYRIGHT INFRINGEMENT
(Against All Defendants)**

59. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in Paragraphs 1 through 58, hereinabove, inclusive, as though set forth at length herein.

60. As set forth in detail above, Elohim is the copyright owner of the Registered Compositions and has the exclusive right to grant licenses for the public performance and public display of the Registered Compositions in the territory of the United States.

61. Defendants charge patrons money to access the karaoke machines that Defendants have placed in the Karaoke Establishments. Patrons pay Defendants an hourly rate for access to one of Defendants' rooms, wherein patrons are provided the opportunity and ability to cause the public performance and public display of each of the Registered Compositions without a license. The sole purpose of the individual rooms is to provide patrons with a space to publicly perform and publicly display musical compositions (including the Registered Compositions) in the karaoke machines, and to charge patrons for such use. In turn, Defendants have a direct financial interest in their patrons' unlawful public performance and public display of each of the Registered Compositions, as Defendants receive income directly from such use.

62. Defendants have absolute control over the use of the karaoke machines on their premises, as well as their patrons' access so such karaoke machines and individual karaoke rooms. Thus, Defendants have the right and ability to supervise, control and stop the unlicensed public performance and unlicensed public display of each of the Registered Compositions by Defendants' patrons.

63. As sophisticated business owners, Defendants know that they must have a license for the public performance and public display of the musical

1 compositions in the karaoke machines that Defendants have on their premises.
2 Furthermore, prior to this litigation, Defendants were in receipt of, and/or were
3 aware of, cease and desist letter(s) and/or public announcements/press releases
4 warning Karaoke Establishments to secure the proper licensing for the karaoke
5 machines and musical compositions thereon, particularly a license for the
6 Compositions (which include the Registered Compositions).

7 64. By knowingly providing patrons unfettered access to publicly perform
8 and publicly display each of the unlicensed Registered Compositions, and charging
9 patrons for such use, Defendants profit from the direct infringement of Plaintiff's
10 rights and thereby have engaged in vicarious copyright infringement. Despite
11 Defendants' knowledge that they lacked authorization to publicly perform and to
12 publicly display each of the Compositions, Defendants knowingly, willfully and
13 intentionally continued to profit from such use and knowingly failed to stop it,
14 notwithstanding their right and ability to supervise the infringement in violation of
15 Plaintiff's rights under Sections 105(4) and 106(5) of the Copyright Act.

16 65. Since the inception of the Karaoke Establishments, Defendants have
17 knowingly supervised and had a direct financial interest in the unauthorized public
18 performance and unauthorized public display of each of the Registered
19 Compositions. On information and belief, Defendants' contributory unlawful
20 conduct has continued since the inception of the Karaoke Establishments on a
21 nightly basis and on such numerous occasions that recounting every instance of
22 infringement is impossible.

23 66. Each unauthorized public performance of each of the Registered
24 Compositions constitutes a separate and distinct act of vicarious infringement.

25 67. Each unauthorized public display of each of the Registered
26 Compositions constitutes a separate and distinct act of vicarious infringement.

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1 67. Defendants' conduct has been and continues to be intentional, willful
2 and with full knowledge of Plaintiff's rights in each of the Compositions, and the
3 vicarious infringement thereof.

4 68. The specific acts of vicarious copyright infringement alleged in this
5 Complaint, as well as Defendants' entire course of conduct, have caused and are
6 causing Plaintiff significant damage. By continuing to provide unauthorized public
7 performances and public displays of each of the Registered Compositions at their
8 Karaoke Establishments, Defendants threaten to continue committing copyright
9 infringement on essentially a daily basis. Unless this Court restrains Defendants
10 from committing further acts of copyright infringement, Plaintiff will suffer
11 irreparable injury for which it has no adequate remedy at law.

12 69. Plaintiff also seeks an order under 17 U.S.C. § 503, directing the
13 impoundment, destruction or other reasonable disposition of all infringing karaoke
14 machines.

15 70. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of
16 Defendants' vicarious infringement of Plaintiff's copyrights, Plaintiff is entitled to
17 recover up to \$150,000 in statutory damages for each of the Registered
18 Compositions. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b),
19 Plaintiff is entitled to its damages, including Defendants' profits from infringement,
20 in connection with the Registered Compositions as will be proven at trial.

21 71. Plaintiff is also entitled to recovery attorney's fees and costs pursuant
22 to 17 U.S.C. § 505 and prejudgment interest according to law.

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**FOURTH CLAIM FOR RELIEF FOR
INDUCING COPYRIGHT INFRINGEMENT
(Against All Defendants)**

72. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in Paragraphs 1 through 71, hereinabove, inclusive, as though set forth at length herein.

73. As set forth in detail above, Elohim is the copyright owner of the Registered Compositions and has the exclusive right to grant licenses for the public performance and public display of the Registered Compositions in the territory of the United States.

74. Defendants charge patrons money to access the karaoke machines that Defendants have placed in the Karaoke Establishments. Patrons pay Defendants an hourly rate for access to one of Defendants' rooms, wherein patrons are provided the opportunity and ability to cause the public performance and public display of each of the Registered Compositions without a license. The sole purpose of the individual rooms is to provide patrons with a space to publicly perform and publicly display musical compositions (including the Registered Compositions) in the karaoke machines, and to charge patrons for such use.

75. By providing patrons the space and ability (i.e., by furnishing the individual rooms with a karaoke machine, video monitor and sound system to play recordings of the musical compositions and display their lyrics) to publicly perform and to publicly display each of the Registered Compositions, Defendants actively promote, encourage and induce their patrons to infringe Plaintiff's rights in each of the Registered Compositions.

76. Furthermore, as sophisticated business owners, Defendants know that they must have a license for the public performance and public display of the musical compositions in the karaoke machines that Defendants have on their premises. Furthermore, prior to this litigation, Defendants were in receipt of, and/or

1 were aware of, cease and desist letter(s) and/or public announcements/press releases
2 warning Karaoke Establishments to secure the proper licensing for the karaoke
3 machines and musical compositions thereon, particularly a license for the
4 Compositions (which include the Registered Compositions).

5 77. On information and belief, Defendants' contributory unlawful conduct
6 has continued since the inception of the Karaoke Establishments on a nightly basis
7 and on such numerous occasions that recounting every instance of infringement is
8 impossible.

9 78. Each unauthorized public performance of each of the Registered
10 Compositions constitutes a separate and distinct act of inducing copyright
11 infringement.

12 79. Each unauthorized public display of each of the Registered
13 Compositions constitutes a separate and distinct act of inducing copyright
14 infringement.

15 80. Defendants' conduct has been and continues to be intentional, willful
16 and with full knowledge of Plaintiff's rights in each of the Compositions, and the
17 inducement of infringement thereof.

18 81. The specific acts of vicarious copyright infringement alleged in this
19 Complaint, as well as Defendants' entire course of conduct, have caused and are
20 causing Plaintiff significant damage. By continuing to provide unauthorized public
21 performances and public displays of each of the Registered Compositions at their
22 Karaoke Establishments, Defendants threaten to continue committing copyright
23 infringement on essentially a daily basis. Unless this Court restrains Defendants
24 from committing further acts of copyright infringement, Plaintiff will suffer
25 irreparable injury for which it has no adequate remedy at law.

26 82. Plaintiff also seeks an order under 17 U.S.C. § 503, directing the
27 impoundment, destruction or other reasonable disposition of all infringing karaoke
28 machines.

83. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of Defendants' vicarious infringement of Plaintiff's copyrights, Plaintiff is entitled to recover up to \$150,000 in statutory damages for each of the Registered Compositions. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff is entitled to its damages, including Defendants' profits from infringement, in connection with the Registered Compositions as will be proven at trial.

84. Plaintiff is also entitled to recover attorney's fees and costs pursuant to 17 U.S.C. § 505 and prejudgment interest according to law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

On the First Claim for Direct Copyright Infringement against all Defendants:

- A. For an order imposing a constructive trust over those monies obtained by Defendants as a result of their violation of the Copyright Act;
- B. For an award of damages, including actual damages and any gains, profits and advantages, obtained by Defendants as a result of their acts of infringement in an amount according to proof;
- C. For an award of statutory damages in an amount of up to \$150,000 for each of the Registered Works infringed according to proof at the time of trial;
- D. For a preliminary and permanent injunction prohibiting Defendants, and their agents, employees, servants, and anyone else acting in concert with them, from infringing, in any manner, the Registered Compositions, pursuant to 17 U.S.C. § 502;
- E. For an order directing the impoundment or other reasonable disposition of all infringing phonorecords and copies of each of the Registered Compositions, including all equipment containing copies or enabling performance or display of the Registered Compositions;

- 1 F. For costs of suit, including reasonable attorney's fees pursuant to 17
2 U.S.C. § 505.

3 **On the Second Claim for Contributory Copyright Infringement against all**
4 **Defendants:**

- 5 A. For an order imposing a constructive trust over those monies obtained
6 by Defendants as a result of their violation of the Copyright Act;
7 B. For an award of damages, including actual damages and any gains,
8 profits and advantages, obtained by Defendants as a result of their acts
9 of infringement in an amount according to proof;
10 C. For an award of statutory damages in an amount of up to \$150,000 for
11 each of the Registered Works infringed according to proof at the time
12 of trial;
13 D. For a preliminary and permanent injunction prohibiting Defendants,
14 and their agents, employees, servants, and anyone else acting in concert
15 with them, from infringing, in any manner, the Registered
16 Compositions, pursuant to 17 U.S.C. § 502;
17 E. For an order directing the impoundment or other reasonable disposition
18 of all infringing phonorecords and copies of each of the Registered
19 Compositions, including all equipment containing copies or enabling
20 performance or display of the Registered Compositions;
21 F. For costs of suit, including reasonable attorney's fees pursuant to 17
22 U.S.C. § 505.

23 **On the Third Claim for Vicarious Infringement against all Defendants:**

- 24 A. For an order imposing a constructive trust over those monies obtained
25 by Defendants as a result of their violation of the Copyright Act;
26 B. For an award of damages, including actual damages and any gains,
27 profits and advantages, obtained by Defendants as a result of their acts
28 of infringement in an amount according to proof;

- 1 C. For an award of statutory damages in an amount of up to \$150,000 for
 2 each of the Registered Works infringed according to proof at the time
 3 of trial;
- 4 D. For a preliminary and permanent injunction prohibiting Defendants,
 5 and their agents, employees, servants, and anyone else acting in concert
 6 with them, from infringing, in any manner, the Registered
 7 Compositions, pursuant to 17 U.S.C. § 502;
- 8 E. For an order directing the impoundment or other reasonable disposition
 9 of all infringing phonorecords and copies of each of the Registered
 10 Compositions, including all equipment containing copies or enabling
 11 performance or display of the Registered Compositions;
- 12 F. For costs of suit, including reasonable attorney's fees pursuant to 17
 13 U.S.C. § 505.

14 **On the Fourth Claim for Inducing Infringement against all Defendants:**

- 15 A. For an order imposing a constructive trust over those monies obtained
 16 by Defendants as a result of their violation of the Copyright Act;
- 17 B. For an award of damages, including actual damages and any gains,
 18 profits and advantages, obtained by Defendants as a result of their acts
 19 of infringement in an amount according to proof;
- 20 C. For an award of statutory damages in an amount of up to \$150,000 for
 21 each of the Registered Works infringed according to proof at the time
 22 of trial;
- 23 D. For a preliminary and permanent injunction prohibiting Defendants,
 24 and their agents, employees, servants, and anyone else acting in concert
 25 with them, from infringing, in any manner, the Registered
 26 Compositions, pursuant to 17 U.S.C. § 502;

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- 1 E. For an order directing the impoundment or other reasonable disposition
2 of all infringing phonorecords and copies of each of the Registered
3 Compositions, including all equipment containing copies of or
4 enabling performance or display of the Registered Compositions;
5 F. For costs of suit, including reasonable attorney's fees pursuant to 17
6 U.S.C. § 505.

7 **On All Claims for Relief:**

- 8 A. For costs of suit incurred herein;
9 B. For prejudgment interest at the legal rate; and
10 C. For such other and further relief as the Court deems just and proper.
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14 DATED: August 3, 2017

TESSER | GROSSMAN LLP

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17 /s/ Brandon M. Tesser
18 BRANDON M. TESSER
19 Attorneys for Plaintiff
20 ELOHIM EPF USA, INC.
21 E-mail: brandon@tessergrossman.com
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims for relief which may be tried to a jury.

DATED: August 3, 2017

TESSER | GROSSMAN LLP

/s/ Brandon M. Tesser

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